

USDC SCAN INDEX SHEET



DE LA CRUZ

SAN DIEGO CITY OF

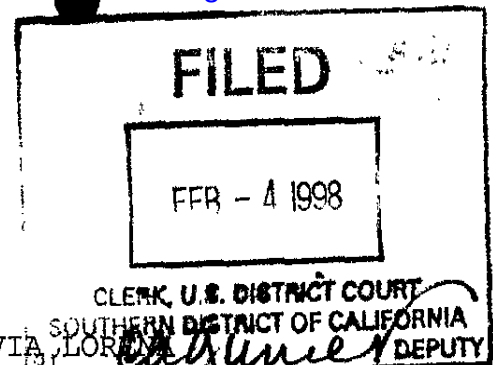
CAG 2/4/98 10:44

3:97-CV-00111

20

STMT.

1 PILLSBURY MADISON & SUTRO LLP
 2 DAVID E. KLEINFELD #110734
 3 BARRY J. TUCKER #164163
 101 West Broadway, Suite 1800
 San Diego, CA 92101
 Telephone: (619) 234-5000



4 Attorneys for Plaintiffs
 5 ESTEBAN AREVALO DE LA CRUZ, SILVIA, LORENA
 DE LEON, KARLA FABIOLA AREVALO DE LEON,
 6 HEYDI VERONICA AREVALO DE LEON, JOSSELINE
 LORENA AREVALO DE LEON, BYRON AREVALO,
 7 PROSPERO GUILLERMO DUBON AREVALO, AND
 JUAN FRANCISCO GOMEZ VELASQUEZ

8
 9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11		
12	ESTEBAN AREVALO DE LA CRUZ; SILVIA	No. 97-0111J (POR)
13	LORENA DE LEON; KARLA FABIOLA	
14	AREVALO DE LEON, a minor, by	<u>JOINT STATEMENT OF</u>
15	ESTEBAN AREVALO DE LA CRUZ and	<u>DISPUTED DISCOVERY ISSUES</u>
16	SILVIA LORENA DE LEON, her	
17	guardians; HEYDI VERONICA AREVALO	Honorable Louisa S. Porter
18	DE LEON, a minor, by ESTEBAN	Courtroom H
19	AREVALO DE LA CRUZ and SILVIA	
20	LORENA DE LEON, her guardians;	
21	JOSSELINE LORENA AREVALO DE LEON,	
22	a minor, by ESTEBAN AREVALO	
23	DE LA CRUZ and SILVIA LORENA	
24	DE LEON, her guardians; BYRON	
25	AREVALO; PROSPERO GUILLERMO DUBON	
26	AREVALO; and JUAN FRANCISCO GOMEZ	
27	VELASQUEZ;	
28		

Plaintiffs,

vs.

CITY OF SAN DIEGO; ROBERT FINCH;
 ROBERT NICKLO; SHELLEY ZIMMERMAN;
 ELIJAH ZUNIGA; MICHAEL BROGDON;
 and DOES 1-20, INCLUSIVE;

Defendants.

OK

20

1 I. INTRODUCTION

2 Pursuant to Plaintiffs' request for a discovery
3 conference, the parties hereby submit the following
4 statement detailing the specific discovery issues which
5 could not be resolved after the parties met and conferred.

6 The foregoing Joint Statement of Disputed Discovery
7 issues sets forth the following:

- 8 1. The nature of the discovery request or dispute;
- 9 2. Plaintiffs' factual and legal basis for the
10 discovery request;
- 11 3. Defendants' statement in response; and
- 12 4. A meet and confer statement as to the disputed
13 issues.

14 II. DISCOVERY DISPUTE NO. 1:

15 Plaintiffs request the internal affairs investigation
16 documents and reports (including the tape recorded
17 interviews of the Defendants) and the personnel files of the
18 following Defendant officers: Michael Brogdon; Robert Finch;
19 Robert Nicklo; Shelly Zimmerman; and Elijah Zuniga.
20 Specifically, in addition to the internal affairs materials
21 related to the incident, Plaintiffs are seeking the
22 following personnel documents: internal affairs incident
23 reports; performance reviews; employee performance reports;
24 employee evaluations; personnel history statements; and
25 notice of reprimands on the above named Defendant officers.
26 See Plaintiffs' letter and Addendum, dated November 12,
27 1997, requesting production of specific personnel records of
28 Defendant Police Officers, attached hereto as Exhibit 1;

1 Plaintiffs' August 25, 1997 letter detailing the scope of
2 the requested information, attached hereto as Exhibit 2.
3 Plaintiffs are not seeking every piece of paper which
4 chronicles the careers of the above mentioned officers. The
5 important documents are those which relate to the officers'
6 job performance in this and other incidents, the City's
7 discipline procedures and prior claims of misconduct.

8 III. PLAINTIFFS' FACTUAL AND LEGAL BASIS FOR DISCOVERY

9 REQUEST:

10 This is an illegal search, excessive force and unlawful
11 detainment case brought pursuant to 42 U.S.C. Section 1983
12 and California law against the San Diego Police Department
13 and five of its officers. Plaintiffs also allege negligent
14 hiring, training, retention, supervision, and unlawful
15 policy, custom or practice against the City of San Diego
16 ("City") pursuant to Monell v. New York City Dept. of Social
17 Services, 436 U.S. 658 (1978).

18 Plaintiffs have requested that the City produce the
19 above requested documents listed in Exhibit 1 and 2. The
20 City contends that it is prohibited from voluntarily
21 providing copies of the requested documents. See letter
22 from Francis M. Devaney to Barry J. Tucker, dated November
23 21, 1997 (denying Plaintiffs' request for subject police
24 files), attached hereto as Exhibit 3. Thus, Plaintiffs
25 timely submit a Joint Statement of Disputed Discovery Issues
26 ("Joint Statement") to resolve this discovery dispute.

27 Plaintiffs rely on Hampton v. City of San Diego, 147
28 F.R.D. 227, 231 (S.D. Cal. 1993), as the correct procedure

1 for preparing the Joint Statement. In Hampton, this Court
2 articulated the following specific requirements of a Joint
3 Statement: (1) describe the relevance of the information
4 sought; (2) identify the interests of the plaintiffs which
5 would be harmed if the material were not disclosed; (3)
6 specify how that harm would occur and how extensive it would
7 be; and (4) explain why it would be impossible or
8 impracticable to acquire the information through alternative
9 means. Id. at 231. Plaintiffs address each element in
10 turn.

11 1. Relevance.

12 Plaintiffs' discovery request for the performance
13 reviews, records and internal investigation reports set
14 forth in Exhibit 1 and 2 is relevant because it has a
15 "tendency to make the existence of any fact that is of
16 consequence to the determination of the action more or less
17 probable than it would be without the evidence." Fed. R.
18 Evid. Rule 401. See also Fed. R. Civ. Proc. 26(b)(1)
19 (parties may obtain discovery regarding any matter, not
20 privileged, which is relevant to the subject matter of the
21 pending litigation).

22 Here, Plaintiffs assert that Defendants used excessive
23 and unnecessary force to accomplish an unjustified and
24 illegal search of Plaintiffs' home. Thus, evidence of
25 Defendant officers' performance reviews, employee reports
26 and the current and previous internal affairs investigations
27 may establish a pattern of illegal searches, unlawful
28 detainments, excessive violence, behavior problems or

1 training deficiencies which would be admissible at trial.
2 See Fed R. Evid. 404(b)(2) (evidence of other wrongs or acts
3 may be admissible to show motive, opportunity, intent,
4 preparation, plan, knowledge or absence of mistake). See
5 also Soto v. City of Concord, 162 F.R.D. 603, 610-11 (N.D.
6 Cal. 1995) (the question of relevancy should be construed
7 liberally and with common sense). Thus, the requested
8 records and previous complaint reports are relevant to the
9 present litigation and are reasonably calculated to lead to
10 the discovery of admissible evidence.

11 2. Plaintiffs' interests in the subject material.

12 Plaintiffs have a strong and legitimate interest in
13 vindicating their rights and seeking justice for the
14 unwarranted pain and suffering inflicted upon them by
15 Defendants. Plaintiffs discovery requests are narrowly
16 tailored to obtain discoverable information which may help
17 establish Plaintiffs' civil rights claims. Plaintiffs are
18 not simply looking for "dirt" on the Defendant officers or
19 conducting an unwarranted "fishing expedition." Rather,
20 Plaintiffs have a legitimate interest in obtaining discovery
21 of the requested information listed in Exhibit 1 and 2 in
22 order to effectively prepare their case against the City.

23 3. The extent of harm to Plaintiffs if the documents
24 were not disclosed.

25 Plaintiffs are seeking to establish that Defendants
26 acted maliciously and/or negligently in conducting their
27 investigation and subsequently obtaining and executing a
28 search warrant upon Plaintiffs. Plaintiffs would be

1 prejudiced severely if denied the opportunity to discover
2 the documents at issue. The documents may be the only
3 source to show the negligent hiring and/or training of
4 Defendants. Further, the documents may help establish that
5 the City knew or should have known of past misconduct of
6 certain individual officers and failed to take adequate
7 remedial measures which could have prevented the harm
8 suffered by Plaintiffs in this incident. Finally, the
9 requested documents may establish that the individual
10 officers displayed a pattern or history of violent or
11 otherwise improper behavior in similar arrest situations.

12 4. Plaintiffs' inability to acquire the information
13 through alternative means.

14 Plaintiffs are seeking police reports, personnel files
15 and internal affairs records of the Defendant officers which
16 are exclusively within the City's possession. Plaintiffs
17 simply have no other means of discovering the requested
18 documents other than directly from the Defendants.

19 IV. DEFENDANTS' RESPONSE TO DISCOVERY DISPUTE NO. 1:

20 Defendants oppose Plaintiffs' request for the Internal
21 Affairs Division investigation into this incident and for
22 the personnel files of the individually-named Defendant
23 police officers on the following grounds:

24 1. Internal Affairs Division investigation into this
25 incident (IA No. 96-329C).

26 The Internal Affairs Division investigation into a
27 plaintiff's complaint is ordinarily discoverable and
28 frequently provided to plaintiff's counsel by the Office of

1 the City Attorney without a court order. However, the
2 Internal Affairs investigation in this case should not be
3 treated as an ordinary investigation, but instead should be
4 treated as undiscoverable, privileged material prepared
5 solely in anticipation of this litigation. The Internal
6 Affairs investigation was not triggered by a direct
7 complaint by Plaintiffs to the San Diego Police Department;
8 it was begun upon request of the City's Risk Management
9 Department after receipt of Plaintiffs' Administrative Claim
10 Against the City. Plaintiffs' claim is a mandatory
11 prerequisite to a civil lawsuit against the City and was, in
12 fact, attached to Plaintiffs' complaint on file with this
13 Court. The Internal Affairs investigation was done solely
14 in response to Plaintiffs' initiation of this lawsuit.
15 Furthermore, during the course of the Internal Affairs
16 investigation, Plaintiffs' attorney refused to allow
17 Plaintiffs to be interviewed; the result was that only the
18 five individually-named Defendant police officers were
19 interviewed. Consequently, the only contents of the
20 Internal Affairs investigative report are those interviews
21 and the documents concerning the search of Plaintiffs'
22 apartment, all of which have been previously provided to
23 Plaintiffs. Three of the five police officers have already
24 been deposed, and the other two will be produced for
25 deposition upon request. Given the facts that the Internal
26 Affairs investigation was instituted solely in response to
27 Plaintiffs' initiation of litigation, that Plaintiffs
28 refused to cooperate in the investigation, and that all of

1 the officers are available for deposition, it would be
2 unfair to Defendants to now provide Plaintiffs with the
3 Internal Affairs investigative report into this incident.
4 The litigation privilege clearly should attach to the
5 requested report.

6 2. Personnel files of the Defendant police officers.

7 Plaintiffs also request each individually-named
8 officer's personnel history, including previous Internal
9 Affairs investigations involving the officer, employee
10 performance reports and evaluations, and personnel history
11 statements, ostensibly to "show motive, opportunity, intent,
12 preparation, plan, knowledge or absence of mistake" in
13 committing the alleged constitutional violations claimed in
14 this case. Defendants object to Plaintiffs' request for the
15 officers' personnel files. Despite their claim otherwise,
16 Plaintiffs' request is a typical "fishing expedition" into
17 Defendants' personal lives under the guise of a Monell claim
18 when, in reality, Plaintiffs are looking for "dirt" on the
19 officers, i.e., irrelevant, inadmissible character evidence.
20 Nothing in an officer's personnel file is admissible in a
21 case like this, but attorneys continue to request, and
22 sometimes receive, this information. Plaintiffs should be
23 prevented from prying into the officers' personal lives and
24 instead be limited to relevant information regarding this
25 incident--the officers' training records, the records of
26 this particular incident and any relevant previous
27 complaints of incidents similar to this one. Those records
28 (except any previous Internal Affairs investigations, to be

1 discussed below) have already been voluntarily produced, or
2 will be produced upon request, to Plaintiffs. The other
3 irrelevant and inadmissible evidence in the officers'
4 personnel files should be restricted. No personal,
5 irrelevant information should be disclosed to Plaintiffs,
6 especially in a case like this involving undercover police
7 officers whose identities must be protected. The officers'
8 safety, privacy and confidence in the police department's
9 ability to keep their private lives private clearly
10 outweighs the Plaintiffs' interest in prying into the
11 officers' personal lives in quest of inadmissible character
12 evidence about the officers.

13 As to previous Internal Affairs investigations
14 involving the officers, Defendants understand that previous,
15 similar complaints against the officers may be relevant to
16 Plaintiffs' Monell claim against the City, and do not object
17 to this Court's in camera review of Internal Affairs
18 investigations into any such complaints. However,
19 Defendants do object to Plaintiffs' blanket request for such
20 information. Any information released by this Court must be
21 limited to complaints and investigations relevant to the
22 issues in dispute in this particular case. The facts in
23 this case are as follows: After receiving a citizen's
24 complaint about drug sales at Plaintiffs' apartment, Officer
25 Brogdon utilized a reliable confidential informant to
26 purchase rock cocaine from the apartment. Brogdon then
27 swore out an affidavit and obtained from a San Diego
28 Municipal Court judge a warrant to search Plaintiffs'

1 apartment. The warrant was served by the five
2 individually-named Defendant police officers. The only
3 force used in serving the warrant was a show of firearms,
4 including an automatic machine gun used by Officer
5 Zimmerman. Once Plaintiffs were handcuffed, and the
6 apartment secured, no further force was necessary or
7 utilized. The search proved fruitless, no arrests were
8 made, and the officers left the apartment within one hour of
9 arriving. Those facts must form the parameters upon which
10 this Court conducts its in camera review of the requested
11 files. Previous investigations involving unrelated types of
12 incidents or dissimilar conduct should not be released.

13 Furthermore, if this Court is inclined after its in
14 camera review to release any relevant information to
15 Plaintiffs regarding similar prior incidents involving any
16 of the officers, Defendants request (1) that only the names
17 and addresses of previous complaining parties and witnesses
18 be released, and (2) that no records of investigative
19 conclusions or discipline imposed on the officers be
20 released. A long line of state court cases dealing with
21 police personnel records maintained pursuant to state law
22 have limited the release of information of prior Internal
23 Affairs investigations to the names and addresses of
24 possible witnesses only (see, e.g., Pitchess v. Superior
25 Court, 11 Cal. 3d 531 (1974); Carruthers v. Municipal Court,
26 110 Cal. App. 3d 439 (1980); Kevin L. v. Superior Court, 62
27 Cal. App. 3d 823 (1976)). The Internal Affairs files to be
28 produced to this Court are maintained pursuant to the state

1 law interpreted in those cases; it is respectfully requested
2 that this Court follow that lead and limit discovery in this
3 case accordingly.

4 As to any conclusions reached or discipline imposed in
5 any Internal Affairs investigations, Defendants contend that
6 such information is irrelevant and inadmissible in this
7 case. The jury during trial of this matter will be asked to
8 make its own conclusions as to the propriety of the
9 officers' actions. The Court will instruct the jury as to
10 the law that must govern its deliberations. To have
11 evidence of conclusions reached by other bodies under
12 different standards (i.e., administrative police regulations
13 and procedures) and discipline imposed pursuant to different
14 systems (i.e., Civil Service Commission rules and
15 procedures) will confuse the jury as to its role as the
16 ultimate decision-maker in this case. The fact that
17 discipline was imposed and/or the conclusory bases for such
18 discipline is irrelevant, prejudicial, confusing and
19 inadmissible.

20 //

21 //

22 //

23 //

24 //

25 //

26 //

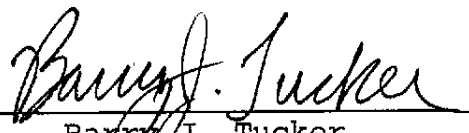
27 //

28 //

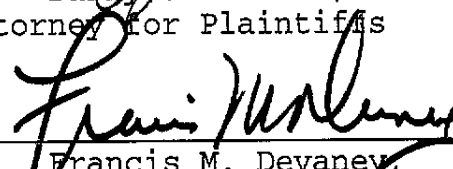
1 V. MEET AND CONFER STATEMENT AS TO DISPUTE NO. 1:

2 Despite repeated attempts by the parties' counsel to
3 informally resolve these issues, including the sharing of a
4 privilege log, no agreement can be reached without the
5 Court's assistance.

6 Dated: 1-16-98


Barry J. Tucker,
Attorney for Plaintiffs

8
9 Dated: 1/16/98


Francis M. Devaney,
Deputy City Attorney

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Pillsbury



Madison &
Sutro LLP

ATTORNEYS AT LAW
101 WEST BROADWAY SUITE 1800
SAN DIEGO, CALIFORNIA 92101-8219
TELEPHONE: (619) 234-5000 FAX: (619) 236-1995
Internet: pillsburylaw.com

Writer's direct dial number / email:

(619) 544-3370

November 12, 1997

Francis M. Devaney
Deputy City Attorney
Civil Division
1200 Third Avenue, Suite 1200
San Diego, CA 92101-4184

Re: De La Cruz et al. v. City of San Diego, et al. United States District
Court Case No. 97 CV 0111J (POR)

Dear Frank:

Thank you for your letter of October 15, 1997. In addition to the Internal Affairs investigation of this case, identified as No. 96-329C, we request production of the various items listed in the addendum to this letter. The items pertain to the privilege log you provided on October 15, 1997 of the records of each individually named police officer in the above-entitled matter.

Additionally, we would like to confirm that all information in the privilege log is current. For example, according to the privilege log Officers Brogdon and Zuniga have had no performance reports or reviews in 1997, while Officers Finch, Nicklo and Zimmerman all have had performance reports or reviews this year.

Francis M. Devaney
November 12, 1997
Page 2

Please review the enclosed information and let me know how you would like to proceed from here so we can obtain the requested documents as soon as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barry", with a long, sweeping horizontal line extending to the right.

Barry J. Tucker

Encl.

ADDENDUM REGARDING PRIVILEGE LOG OF INDIVIDUALLY NAMED
DEFENDANT POLICE OFFICERS IN THE MATTER OF
DE LA CRUZ, ET AL. V. CITY OF SAN DIEGO, ET AL.
UNITED STATES DISTRICT COURT CASE NO. 97 CV011J (POR)

NAME

Officer Michael Brogdon, I.D. #3757

San Diego Police Department, Internal Affairs Division

<u>Date of Incident</u>	<u>IA#</u>
07/15/94	94-355

San Diego Police Department, Division File

<u>Date</u>	<u>Name</u>
12/23/96	Performance Review

San Diego Police Department, Personnel File

<u>Date</u>	<u>Name</u>
05/24/86-12/23/96	Employee Performance Reports

City of San Diego Personnel Department

<u>Date</u>	<u>Name</u>
05/21/86	Employee Evaluation
08/21/86	Employee Evaluation
11/21/86	Employee Evaluation
11/22/87	Employee Evaluation
03/22/88	Employee Performance Report
06/22/88	Employee Performance Report
09/22/88	Employee Performance Report
12/22/88	Employee Performance Report
12/22/89	Employee Performance Report
12/23/90	Employee Performance Report
12/23/91	Employee Performance Report
12/23/92	Employee Performance Report

12/23/94	Employee Performance Report
12/23/95	Employee Performance Report
12/23/96	Employee Performance Report

NAMEOfficer Robert Finch, I.D. #3404San Diego Police Department, Internal Affairs Division

<u>Date of Incident</u>	<u>IA#</u>
04/20/95	95-256

San Diego Police Department, Division File

<u>Date</u>	<u>Name</u>
06/19/97	Performance Review

San Diego Police Department, Personnel File

<u>Date</u>	<u>Name</u>
04/04/83-06/19/97	Employee Performance Reports

City of San Diego Personnel Department

<u>Date</u>	<u>Name</u>
04/26/83	Employee Evaluation
06/01/83	Employee Evaluation
06/29/83	Employee Evaluation
07/27/83	Employee Evaluation
09/19/83	Employee Evaluation
12/19/83	Employee Evaluation
12/20/88	Employee Performance Report
06/19/91	Employee Performance Report
06/19/94	Employee Performance Report
06/19/95	Employee Performance Report
06/19/96	Employee Performance Report
06/19/97	Employee Performance Report

NAMEOfficer Robert Nicklo, I.D. #3738San Diego Police Department, Internal Affairs Division

<u>Date of Incident</u>	<u>IA#</u>
01/27/93	93-044
10/23/93	93-501
06/22/93	93-541
09/07/94	94-480
12/14/94	95-182
06/19/96	96-256

San Diego Police Department, Division File

<u>Date</u>	<u>Name</u>
10/02/96	Performance Review

San Diego Police Department, Personnel File

<u>Date</u>	<u>Name</u>
03/30/86-10/02/96	Employee Performance Reports
04/04/83-06/19/97	Employee Performance Reports

City of San Diego Personnel Department

<u>Date</u>	<u>Name</u>
03/26/86	Employee Evaluation
06/26/86	Employee Evaluation
09/26/86	Employee Evaluation
01/01/88	Employee Performance Report
07/01/88	Employee Performance Report
10/01/88	Employee Performance Report
10/02/89	Employee Performance Report
10/02/90	Employee Performance Report
10/02/91	Employee Performance Report
10/02/92	Employee Performance Report
10/15/92	Employee Performance Report

10/02/93	Employee Performance Report
10/02/96	Employee Performance Report

NAMEOfficer Shelley Zimmerman, I.D. #3463San Diego Police Department, Internal Affairs Division

<u>Date of Incident</u>	<u>IA#</u>
06/19/96	96-256

San Diego Police Department, Division File

<u>Date</u>	<u>Name</u>
11/21/96	Performance Review
03/15/97	Performance Review
06/15/97	Performance Review

San Diego Police Department, Personnel File

<u>Date</u>	<u>Name</u>
04/25/86	San Diego Police Department Personnel History Statement
04/25/86	Memorandum Re Penal Code Section 11166 Child Abuse Reporting Requirement
04/24/87-06/15/97	Employee Performance Reports

City of San Diego Personnel Department

<u>Date</u>	<u>Name</u>
10/04/88	Employee Performance Report
04/24/90	Employee Performance Report
04/25/91	Employee Performance Report
04/25/92	Employee Performance Report
07/29/94	Employee Performance Report
12/05/96	Employee Performance Report
03/15/97	Employee Performance Report
06/15/97	Employee Performance Report

NAMEOfficer Elijah Zuniga, I.D. #4734San Diego Police Department, Internal Affairs Division

<u>Date of Incident</u>	<u>IA#</u>
12/18/92	92-783
11/06/93	93-533
08/11/94	94-398
08/22/94	94-421
11/04/94	94-549
12/08/94	94-588
07/10/94	95-040
12/21/94	95-054
04/15/95	95-203
07/09/95	95-522
04/29/96	96-201
05/03/96	96-224
06/03/96	96-239
08/27/96	96-344
03/21/97	97-115

San Diego Police Department, Division File

<u>Date</u>	<u>Name</u>
09/29/96	Performance Review
11/29/96	Performance Development Plan

San Diego Police Department, Personnel File

<u>Date</u>	<u>Name</u>
08/15/94	Notice of Reprimand for Preventative Category 1 Police Equipment Accident
06/06/94	Supervisor's Investigative Report concerning three preventable Category 1 accidents
09/21/91-09/09/96	Employee Performance Reports

City of San Diego Personnel Department

<u>Date</u>	<u>Name</u>
09/21/91	Employee Performance Report
12/21/91	Employee Performance Report
03/21/92	Employee Performance Report
03/22/93	Employee Performance Report
09/29/94	Employee Performance Report
09/30/95	Employee Performance Report
09/29/96	Employee Performance Report



ATTORNEYS AT LAW
101 WEST BROADWAY SUITE 1800
SAN DIEGO, CALIFORNIA 92101-3219
TELEPHONE: (619) 234-5000 FAX: (619) 236-1995
internet: pillsburylaw.com

Writer's direct dial number / email:
(619) 544-3370

August 25, 1997

Francis M. Devaney
Deputy City Attorney
Office of the City Attorney
Civil Division
1200 Third Avenue, Suite 1200
San Diego, CA 92101-4184

Re: Arevalo De La Cruz v. City of San Diego
U.S. District Court Case No. 97-CV-0111J (POR)

Dear Frank:

This letter follows up on Plaintiff's requests for the personnel and internal affairs documents and information concerning the officers involved in the above matter.¹

Although you did not formally produce a privilege log with respect to the assertion of the official information privilege as to the above requests, you ostensibly have identified the requested information as being located in the officers' respective personnel files and in the internal affairs investigation (including the internal affairs division tape-recorded interviews and the report prepared) of the incident. However, you have not detailed what documents are contained in these files so that we may determine what information is relevant to the issues raised in the complaint.

¹ The requests generally concern anything relating to the training, conduct, performance or evaluation of the officers involved in the incident. They also concern any and all records, complaints or other documents concerning the officers involved which relate to their use of excessive force, aggressive conduct, false arrest, improper arrest procedures, improper use of force, improperly obtaining or executing upon a search warrant, use of any improper procedures, or any other complaints by any person or entity about the officers involved.

Francis M. Devaney
August 25, 1997
Page 2

In an effort to clarify the issue, Plaintiff is not seeking information or documents concerning the officers' medical histories, emergency contact forms, personal and family data, payroll or pension plans or other salary information, or the identities of unrelated third parties (e.g., the names of individuals arrested by the SDPD).

However, Plaintiff is seeking and is entitled to information related to the allegations of the complaint, and to the extent the personnel and internal affairs files contain information on the issues of credibility, notice to the employer, ratification by the employer, motive of the officers, any other instances of misconduct, and policies of hiring, training, supervision and control of SDPD officers, then the information is discoverable.

Please also provide me with available dates for the deposition of Officer Brogdon to be taken before September 26, 1997 (when the confidential settlement statements are due).

I look forward to hearing from you.

Very truly yours,


Barry J. Tucker

Francis M. Devaney
August 25, 1997
Page 3

bcc: David M. Logan, Esq.

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS
FRANCIS M. DEVANEY
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn

CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-4184
TELEPHONE (619) 533-5800
FAX (619) 533-5847

November 21, 1997

Barry J. Tucker, Esq.
Pillsbury, Madison & Sutro LLP
101 W. Broadway, Suite 1800
San Diego, CA 92101

Dear Barry:

De La Cruz, et al. v. City of San Diego, et al.
United States District Court Case No. 97CV0111J (POR)

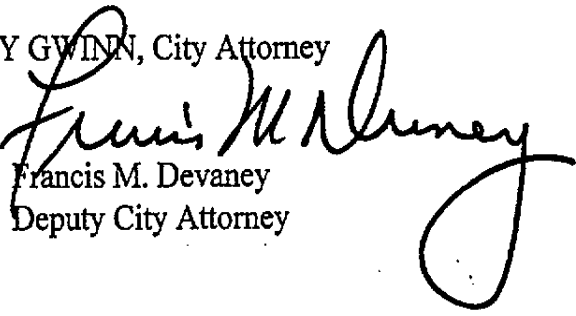
As I explained in my November 19, 1997, voice-mail message to you, I am constrained and prohibited by statute and by the policies of this office and the San Diego Police Department from voluntarily providing you with copies of the documents requested in your November 12, 1997, letter in the above-entitled matter. Please, therefore, prepare a Joint Statement of Disputed Discovery Issues listing the requested documents and plaintiffs' factual and legal bases in support of production of those documents; leave a blank for defendants' response in opposition to production and I will insert our arguments. We can then submit the statement and request an in-camera review of the documents.

Thank you for your courtesy and cooperation. I look forward to hearing from you soon.

Sincerely yours,

CASEY GWINN, City Attorney

By


Francis M. Devaney
Deputy City Attorney

FMD:kjk:Civ.